S.B.CRIMINAL LEAVE TO APPEAL NO. 56/2007

(Dulichand Vs. Shanker Singh)

Date of order : 25/07/2007

HON'BLE MR.H.R.PANWAR, J.

Mr. Aju V. Josh for the appellant.

By the instant criminal leave to appeal under Section 378 (4) Cr.P.C., the complainant appellant seeks leave to appeal against the judgment and order dated 8.1.2007 passed by Additional Chief Judicial Magistrate (Economic Offence) Jodhpur (for short 'the trial court' hereinafter) in Private Complaint Case No. 1880/03 (284/01) whereby the complaint filed by the complainant against respondent Shanker Singh under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter) was dismissed.

I have heard learned counsel for the appellant. Carefully gone through the judgment and order impugned as also record of the trial court.

The complainant filed a complaint under Section 138 of the Act against respondent Shanker Singh alleged to be Proprietor of Geeta Electronics, Jalore on the ground that the accused respondent Shanker Singh gave a cheque bearing No.028716 for a sum of Rs.5000/-. The cheque on being

presented to the bank, was returned unpaid. Before the trial court, the petitioner failed to establish that the cheque in question was signed and issued by respondent Shanker Singh for M/s Geeta Electronics, Jalore. The cheque Ex.1A is on record which appears to have been signed by one Versingh for Bharat Music Centre as proprietor. At any rate, it is not the case of the petitioner that the petitioner has any amount outstanding against Bharat Music Centre or its proprietor Versingh. In the complaint Versingh has not been impleaded as accused. The trial court on the basis of the material available on record came to the conclusion that the complainant failed to establish the cheque having been issued by respondent Shanker Singh in the capacity of proprietor of Geeta Electronics, in the circumstances, therefore, no offence under Section 138 of the Act is made out against respondent Shanker Singh. In my view, the conclusion arrived at by the trial court is based on proper and sound appreciation of the evidence available on record and it is not at all a fit case warranting grant of leave to appeal to this Court. The application seeking leave to appeal is therefore, dismissed.

(H.R.PANWAR),J.

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